

BOARD OF SUPERVISORS  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the \_\_\_\_ day of \_\_\_\_, 2006:

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Present

Vote

Walter C. Zaremba, Chairman  
Kenneth L. Bowman, Vice Chairman  
Sheila S. Noll  
James S. Burgett  
Thomas G. Shepperd, Jr.

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On motion of \_\_\_\_\_, which carried \_\_\_\_, the following ordinance was adopted:

AN ORDINANCE TO AMEND CHAPTER 23.1, WETLANDS, OF THE YORK COUNTY CODE TO INCORPORATE PROVISIONS AUTHORIZED BY THE CODE OF VIRGINIA REGARDING WETLANDS BOARD MEMBERSHIP AND TO AMEND CHAPTER 23.2, CHESAPEAKE BAY PRESERVATION AREAS, OF THE YORK COUNTY CODE TO ESTABLISH FEES FOR APPEALS APPLICATIONS, TO ESTABLISH THE BOARD OF SUPERVISORS' RIGHT TO APPEAL, AND TO CLARIFY PROVISIONS RELATED TO CIVIL PENALTIES FOR VIOLATIONS

WHEREAS, the York County Board of Supervisors has determined that it is necessary to amend the terms of Chapter 23.1, Wetlands, of the York County Code to incorporate provisions of the Code of Virginia relative to the composition of Wetlands Boards; and

WHEREAS, the Board has also determined that amendment of Chapter 23.2, Chesapeake Bay Preservation Areas, is necessary to establish an appropriate application fee for appeals to the Chesapeake Bay Board, to establish the Board's right to appeal a decision of the Chesapeake Bay Board, and to clarify and supplement the provision related to civil penalties for violations.

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the \_\_\_\_ day of \_\_\_\_, 2006, that Chapter Nos. 23.1, Wetlands, and 23.2, Chesapeake Bay Preservation Areas, be, and they are hereby, amended to read as follows:

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**Chapter 23.1 – Wetlands.****Sec. 23.1-3. Wetlands board—Generally.**

- (a) There is hereby continued a wetlands board, which shall consist of five (5) residents of the county appointed by the board of supervisors. All terms of office shall be for five (5) years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The chair of the board shall notify the board of supervisors at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the board of supervisors promptly if any vacancy occurs. Such vacancies shall be filled by the board of supervisors without any delay, upon receipt of such notice. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may serve successive terms. A member whose term expires shall continue to serve until his/her successor is appointed and qualified. Members of the board shall hold no other public office in the county, except that they may be members of the local planning or zoning commission, [members of a board established by the local governing body to hear cases regarding ordinances adopted pursuant to the Chesapeake Bay Preservation Act and regulations promulgated thereunder,](#) directors of soil and water conservation boards, or local erosion commissions, or on the local board of zoning appeals. Where members of these local commissions or boards are appointed to a local wetlands board, their terms of appointment shall be coterminous with their membership on those boards or commissions. The board of supervisors shall also appoint at least one but not more than three alternate members to the wetlands board. The qualifications, terms, and compensation of alternate members shall be the same as those of members. Any member who knows that he will not be able to attend a board meeting shall notify the chairman at least 24 hours in advance of such meeting. The chairman shall select an alternate member to serve in place of the absent member at the board meeting, which shall be noted in the records of the board.
- (b) Upon a hearing with at least fifteen (15) days notice thereof, any board member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the board of supervisors.

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**Chapter 23.2 – Chesapeake Bay Preservation Areas.****Sec. 23.2-16. Appeals**

- (a) An owner of a property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written application for review to the Chesapeake Bay Board no later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as

practical after receipt of the application. A nonrefundable processing fee of \$250.00 shall accompany each application for an appeal.

- (b) In rendering its decision, the board shall:
- (1) Examine the language of this chapter to determine whether the language is clear or is subject to more than one interpretation;
  - (2) If, in the opinion of the board, the language is clear, the board will require the applicant to show that his case is not within the intent of the regulation. In these cases, the board will assume that the administrative decision is correct and the applicant will bear the burden of proof;
  - (3) If the language of this chapter is unclear, the board will inquire as to whether the decision made by the official involved is consistent with previous administrative determinations in similar situations;
  - (4) If the administrative decision is consistent with prior decisions, the applicant will prevail only if the administrative decision is not within the intent and purpose of the ordinance and, therefore, so arbitrary or unreasonable that the board must substitute its own interpretation and overturn the administrative decision. If the administrative decision is both consistent and reasonable, the board will uphold it;
  - (5) If the administrative decision is inconsistent with prior decisions, the Board will carefully examine all factors involved to ensure that the appearance of an arbitrary decision is overcome by a legitimate attempt to further the intent and purpose of this chapter.
- In applying these guidelines, the board will consider any pertinent factors that arise during the public hearing.
- (c) An owner of a property subject to a board decision, order or requirement, or the County at the initiative of the Board of Supervisors, may appeal to the Circuit Court.

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#### **Sec. 23.2-18. Civil penalties**

- (a) Without limiting the remedies which may be obtained under this section, any person who violates any provision of this chapter or violates, fails, neglects, or refuses to obey any county notice, order, rule, regulation, exception, or permit condition authorized under this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county for the purpose of abating

environmental damage to or restoring the CBPA therein, in such a manner as the court may direct by order, except that where the violator is the county itself or its agent, the court shall direct the penalty to be paid into the state treasury.

- (b) Without limiting the remedies which may be obtained under this section, and with the consent of any person who violates any provision of this chapter or violates, fails, neglects, or refuses to obey any county notice, order, rule, regulation, exception or permit condition authorized under this chapter, the county may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damage to or restoring the CBPA, except that where the violator is the county itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision (a) of this section. Civil charges may be in addition to the cost of any restoration required or ordered by the county.
- (c) In addition to and not in lieu of the penalties prescribed in sections (a) and (b) hereof, the county may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this ordinance and may seek any other remedy authorized by law.

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